



***Town of Tyngsborough
Planning Board***
25 Bryants Lane,
Tyngsborough, Massachusetts 01879-1003
Office: (978) 649-2300 ext. 115

MINUTES
February 4, 2010

APPROVED

Attachments:

1. Meeting Agenda
2. Walter Eriksen & SAI Communications RF Study regarding Proposed Cell Tower, dated 2/4/2010.
2. Walter Eriksen: Memorandum regarding the Town of Tyngsborough Planning Board's Authority to Grant a Special Permit for a Wireless Telecommunications Facility, dated 2/4/10.
3. Pictures from Cell Tower Balloon Test conducted on February 3, 2010.
4. Atty. Charles Zaroulis: Letter of Opinion with supporting documents regarding Wilson Way Cell Tower, dated 2/4/10.
5. Tyngsborough Board of Selectmen letter with supporting documents regarding three proposed zoning change warrant articles, dated 1/15/10.
6. Atty. Charles Zaroulis: Letter of Opinion regarding three proposed zoning change warrant articles, dated 1/29/10.
7. Planning Board approved proposed Zoning change warrant articles with recommended changes.

Members Present: Steve Nocco, Chairman
Tom Delmore, Vice Chairman
Steve O'Neill
Jim Miller
Bill Gramer, Associate Member
Jesse Johnson, P.E.: David E. Ross Associates
Pamela Berman, Clerk

Members Absent: Caryn DeCarteret

7:00pm - Meeting called to order by Chairman S. Nocco

Wilson Way Telecommunications Tower Special Permit – Continued from 1/7/2010

Applicant, Walter Eriksen of TW, LLC and his attorneys, Scott Eriksen, and Douglas Deschenes appeared before the Board regarding the Special Permit application for a telecommunications tower on Wilson Way. They maintain the need for a cell tower at this location and entered into deliberations, a report prepared by SAI Communications that justifies the need for a tower. In

addition, a balloon test was performed at the proposed site that established an approximate idea of how the proposed monopole cell tower would look. T. Delmore asked if any of the other cell towers in town can provide adequate coverage for the Wilson Way area. Mr. Eriksen indicated that they could not. Attorney Zaroulis, representing the Town of Tyngsborough urged the Board to consider his request for the applicant to provide funding for consultant David Maxson, an expert with radio frequency facility technical and regulatory standards, and safety protocol. Atty. Zaroulis indicated that Mr. Maxson has consulted for the Town of Tyngsborough in the past, most recently for the Coburn Road cell tower. In addition, Atty. Zaroulis reported that with regards to zoning, the current Tyngsborough by-law does not provide for cell tower zoning. Therefore, a use variance would have to be applied for with the Tyngsborough Zoning Board of Appeals, who determines the location of a cell tower. Atty. Zaroulis indicated that, should the Board wish to proceed further, they should deny the permit, or at the very least, approve with the condition that the applicant apply for a use variance with the ZBA.

Mr. Eriksen disagreed with Atty. Zaroulis' assessment that the ZBA should be involved, reiterating that the Planning Board is the Special Permit granting authority. In addition, Mr. Eriksen disagreed with the proposal of consulting David Maxson on this project, as the cost proposed is unreasonable at \$3500. Planning Board engineer Jesse Johnson suggested that Mr. Eriksen could submit SAI Communication's report to Mr. Maxson to obtain a cost estimate of his services. Combined with Mr. Johnson's site evaluation, this might keep Mr. Maxson's cost relatively low. Mr. Eriksen agreed to this suggestion. Therefore, Mr. Eriksen will forward the SAI Communication report to Atty. Zaroulis who will forward it to Mr. Maxson. S. O'Neill suggested that an additional amount of monies be provide to the 53G account to cover the cost of this analysis, reminding Mr. Eriksen that any unused monies would be refunded to him. Mr. Erkisen agreed to this.

S. O'Neill: Motion to have \$3,000 be deposited into the already established 53G account in order to provide for the review by David Maxson.

T. Delmore: 2nd the motion

In Favor: 5 Opposed: 0 Absent: 1

Passes: 5-0-1

At this time, Chairman Nocco opened the floor to any residents. Dan Derosiers of 6 Wilson Way strongly voiced his opposition to the cell tower, citing his belief that the proposed location of the tower is conservation land, entering into evidence a copy of an affidavit of deposition from a lawsuit he is involved in with the owners of the lot in question. Atty. Douglas Deschenes commented that in a Land Court settlement in 2005, this particular lot was opened to be allowed to have the right to have a cellular phone tower installed. Paul Sullivan of 4 Wilson Way said that he could see the balloon from his property. Scott Landsteiner of 10 Wilson Way submitted pictures of the balloon test and felt that any cell tower would be unsightly. T. Delmore commented that the Board's concerns centered on health issues, possible conservation issues, and coverage need. Other Wilson Way residents voiced major concerns over those same issues including their property values and urged the Board to take their time to review all of the facts before making a decision.

S. O'Neill: Motion to continue this hearing until March 4, 2010 at 7pm in order for the appropriate parties to review all of the information provided.

J. Miller: 2nd the motion

In Favor: 5 Opposed: 0 Absent: 1

Passes: 5-0-1

S. Nocco: Motion for a 5 minute meeting break

T. Delmore: 2nd the motion

In Favor: 5 Opposed: 0 Absent: 1

Passes: 5-0-1

Discussion

Zoning By-Law Proposals

S. O'Neill: Motion to waive the reading of the legal ad.

T. Delmore: 2nd the motion

In Favor: 5 Opposed: 0 Absent: 1

Passes: 5-0-1

Selectwoman Elizabeth Coughlin, and developer, Walter Eriksen appeared before the Board to explain the proposed Zoning By-Law amendment for Section 2.11.43, and the proposed addition of a new Zoning By-Law section (2.16.00) for Mixed-Use Village Overlay Districts. The by-law changes would satisfy one of the criteria for becoming a "Green Community" and would lay the groundwork for the Tyngsborough Commons project and solar energy panel fields. The zoning amendment and addition would allow Mr. Eriksen to proceed with the design stages only of the project. The permitting stage will be visited at a later date. Town Counsel has reviewed the changes and offered only minor typographical changes be made. Beverly Woods representing NMCOG appeared before the Board to lend her expert interpretation of the new section of the by-law. Some minor typographical changes were made to the new by-law and will be communicated to the Board of Selectmen's office administrator in order for the Town Meeting warrant article to be amended as well. Finally, resident Harvey Miller of 21 Steinbeck St. asked if the solar panel arrays made any noise. Selectwoman Coughlin responded that she did not think so.

S. O'Neill: Motion to close the public portion of the hearing.

T. Delmore: 2nd the motion

In Favor: 5 Opposed: 0 Absent: 1

Passes: 5-0-1

S. O'Neill: Motion to recommend for Special Town Meeting to support the Tyngsborough Board of Selectmen's petition to amend Tyngsborough Zoning By-Law Section 2.11.43 (Public or Private Utility Facilities) including the Table of Permitted Uses as proposed.

T. Delmore: 2nd the motion

Roll Call Vote:

Willaim Gramer: Yes

Jim Miller: Yes

Tom Delmore: Yes

Steve Nocco: Yes

Steve O'Neill: Yes

In Favor: 5 Opposed: 0 Absent: 1

Passes: 5-0-1

S. O'Neill: Motion to recommend for Special Town Meeting to support the Tyngsborough Board of Selectmen's petition to amend Tyngsborough Zoning By-Law Section 2.11.43 (Public or Private Utility Facilities) the definition of Public or Private Utility Facilities as proposed.

T. Delmore: 2nd the motion

Roll Call Vote:

Willaim Gramer: Yes

Jim Miller: Yes

Tom Delmore: Yes

Steve Nocco: Yes

Steve O'Neill: Yes

In Favor: 5 Opposed: 0 Absent: 1

Passes: 5-0-1

S. O'Neill: Motion to recommend for Special Town Meeting to support the Tyngsborough Board of Selectmen's petition to add a new section to the Tyngsborough Zoning By-Law as Section 2.16.00 (Mixed-Use Village Overlay District) as proposed with the approved changes.

T. Delmore: 2nd the motion

Roll Call Vote:

Willaim Gramer: Yes

Jim Miller: Yes

Tom Delmore: Yes

Steve Nocco: Yes

Steve O'Neill: Yes

In Favor: 5 Opposed: 0 Absent: 1

Passes: 5-0-1

Administrative

S. O'Neill: Motion to accept the meeting minutes for January 7, 2010, and January 21, 2010 as written.

T. Delmore: 2nd the motion

In Favor: 5 Opposed: 0 Absent: 1

Passes: 5-0-1

9:30pm

S. O'Neill: Motion to adjourn

T. Delmore: 2nd the motion

In Favor: 5 Opposed: 0 Absent: 1

Passes: 5-0-1

Minutes respectfully submitted by
Pamela Berman
Planning Board Administrative Assistant